708; *Brown* v. *Ins. Co.*, 89 Tex. 590; *Virginia Fire Ins. Co.* v. *Cummings*, — Tex. —, 78 S. W. Rep. 716; *Phoenix Ins. Co.* v. *Schwartz*, 115 Ga. 113. In the present case the court held that the policy was not avoided before the loss, even though plaintiffs did not keep their books in a safe place, but that it became void only upon failure to produce the books when called for. Thus it was held not to fall within the provision of the Code. In a recent Tennessee case, it was held that the iron safe clause was invalid as coming within the provisions of the Code § 3306, that no warranty, unless made with intent to deceive or unless the matter represented increased the loss, shall defeat the policy. *Continental Fire Ins. Co.* v. *Whittaker & Dillard*, — Tenn. —, 79 S. W. Rep. 119. As to just what will amount to a waiver is a matter on which the decisions differ. Under facts similar to those here noted, it was held in *Mitchell* v. *Miss. Home Ins.*, 72 Miss. 53, that the benefit of the clause was thereby waived. See also as to waiver *Parsons* v. *Knoxville Fire Ins. Co.*, 132 Mo. 583; *Germania Fire Ins. Co.* v. *Hick*, 125 Ill. 351; *Robinson* v. *Aetna Fire Ins. Co.*, 135 Ala. 650; *Sowers* v. *Mut. Fire Ins. Co.*, 113 Iowa 551.

INSURANCE, FIRE—PROPERTY IN HANDS OF BAILEE—ADOPTION OF CONTRACT.—Defendant, being engaged in the manufacture, sale, and repairing of carriages, etc., procured a policy of insurance covering its goods and all materials and supplies used in its business, "either its own or held by it in trust or on commission or in storage or for repairs." The insured property, including a carriage belonging to plaintiff which was at defendant's shop for repairs, was destroyed by fire. Defendant, in settling with the insurance company, did not claim to recover the value of the carriage, but only so much as was due it thereon for the repairs, although plaintiff had notified both it and the insurance company, immediately after the fire, of her intention to claim indemnity under the policy. *Held*, that the policy covered the whole value of the carriage, and that plaintiff could recover of defendant her proportional share of the insurance less the amount due for repairs. *Johnson* v. *Chas. Abresch Co.* (1904), — Wis. —, 101 N. W. Rep. 395.

Though two of the justices dissented from the holding, it seems to be fully in accord with the great weight of precedent. Warehousemen, commission men, common carriers and bailees generally have such an insurable interest in the bailed goods that they may insure them for their full value, either with or without the knowledge of the owner, and the latter may adopt the contract after the occurrence of the loss, as in this case. See MAY ON INSURANCE, Vol. I., pp. 80, 95; *Home Ins. Co.* v. *Balto. Warehouse Co.*, 93 U. S. 527; *Calif. Ins. Co.* v. *Union Compress Co.*, 133 U. S. 387; *Pelzer Mfg. Co.* v. *St. P. Fire & Marine Ins. Co.*, 41 Fed. Rep. 271; *Johnson* v. *Campbell*, 120 Mass. 449; *Fire Ins. Assn. of Eng.* v. *Mer. & Miners' Trans. Co.*, 66 Md. 339. Defendant in the principal case, being under § 2607, Rev. St. 1898, plaintiff's trustee as to the insurance, and having failed to fulfill his duty to collect the same, was liable for the resulting damages.

MALICIOUS PROSECUTION—PROBABLE CAUSE—DAMAGES.—Defendants were engaged in a wholesale business, and they employed one Borchardt as a salesman, with the authority to collect bills from his customers. Borchardt became